(Ghewarchand Vs. Firm Lohiya Murlidhar Meghraj & Anr.)
S.B. CIVIL II Appeal NO.100/2007.

Date of order : 26.03.2007.

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr S.P.Sharma, for the appellant.

Heard the learned counsel for the appellant.

The defendant No.2 has preferred this appeal against judgment and decree of trial Court dated 3.4.2006 and of appellate Court dated 18.10.2006 as the trial Court passed decree partially against appellant- defendant No.2 but the first appellate Court held that the appellant defendant No.2 is liable to pay the entire decreetal amount.

The plaintiff filed the suit for recovery of Rs. 30,030/-. The plaintiff's case is that plaintiff on guarantee of defendant No.2/ appellant delivered 150 teen of palm oil to defendant No.1. The defendant No.1 and defendant No.2 both agreed that they will pay interest at the rate of 1.50% per annum to the plaintiff against the due principal amount of Rs. 19,500/-. Since the defendants did not pay the due amount, therefore, plaintiff filed the suit for recovery of principal amount of Rs. 19,500/- and interest thereon amounting to Rs. 10,530/-; in total Rs. 30,030/.

The defendant No.1 admitted that he purchased the 150 teen of palm oil for consideration of Rs. 19,500 but

denied guarantee of defendant No.2. The defendant No.1 stated that the name of Gewar Chand mentioned in the bill was of his brother Ghewar Chand S/o Tarachand and not of defendant No.2. The defendant No.1 stated that he paid the amount of Rs. 19,500/- by cheque dated 1.5.1980. This cheque was paid to one of the partner of plaintiff Ram Chandra, and therefore, no amount of plaintiff is due in defendant No.1.

The defendant No.2 denied his involvement in the transaction in total and prayed that he is not liable to pay any amount nor suit can be decreed against him.

The issues were framed by the trial Court. On behalf of plaintiff, plaintiff's partner Keshri Mal and witnesses PW/s Deppak and PW/3 Ram Chandra were examined. The defendant No.2 alone gave his statement and produced the witness Babulal. On behalf of defendant No.1, the proprietor of firm, Babulal gave his statement.

The learned counsel for the appellant vehemently submitted that the plaintiff's entire case was against defendant No.1 and its case was that defendant No.2 was guarantor of the plaintiff. For the plea that the cheque which was encashed by defendant No.2 was in fact, given by the defendant No.1 to defendant No.2 he encashed it, there is no pleading. It is also submitted that appellant defendant No.2 repaid the amount to the plaintiff, therefore, no decree could have been passed against

defendant No.2. Learned counsel for the appellant further submitted that since contract was breached by the defendant No.1 alone, the appellant cannot be held liable to pay interest as he was not contracting party in the dealing nor he is liable to pay interest because of the reason that cheque was given by defendant No.1 in the name of plaintiff and admittedly, the amount has been withdrawn from the said Bank of defendant No.1. It is also submitted that rate of interest awarded by the courts at the rate of 18% P.A. is too high.

I have considered the submissions of learned counsel for the appellant. The facts are not in dispute. Two courts below carefully considered the facts of the case and relied upon evidence of defendant No.2 himself and recorded the findings about the withdrawal of Rs. 19,500/- by defendant No.2 which was the amount of consideration for the product sold by the plaintiff. His involvement in transaction is not only found from one transaction but from one another letter which was sufficient evidence to prove business relations of defendant No.2 with the parties.

So far as fact of sale of 150 teen of palm oil is concerned, this fact is not in dispute, and therefore, the learned trial Court rightly held that the plaintiff sold 150 teen of palm oil and consideration for the sale was Rs. 19,500/-. The defendant No.1's case is that he himself paid the amount of Rs. 19,500/- to the partners of the plaintiff firm through cheque. The defendant No.2 in his statement

clearly admitted that he encashed that cheque. The plea was that he encashed the cheque on behalf of plaintiff firm and paid it to the partner of the firm in the presence of two witnesses Deep Chand and Mangi Lal. The defendant No.1 did not produce his own borther Gehwar Chand S/o Tara Chand to prove that he was the person named in the bill given by the plaintiff and was in between the transaction of sale. The defendant No.2 did not produce witness Deepchand and Mangilal who according to him were the persons before whom he paid the cash amount of Rs. 19,500/- to the plaintiff after encashing the cheque which was given by the defendant No.1 to the plaintiff. Therefore, in sum and substance, in the present case, the plaintiff proved that he sold the goods to defendant No.1 through defendant No.2 and defendant No.2 withdrew the cheque amount and he failed in proving its repayment to plaintiff.

In view of the above reasons, the two courts below very carefully imparted justice and no substantial question of law is involved in the appeal. The award of interest @ 18%, in the facts of the case, cannot be said to be unreasonable or high because of the reason that the matter was commercial transaction.

The appeal fails and is accordingly dismissed.

(PRAKASH TATIA), J.

gandhi/